

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN W. SLAGLE,

Case No. 3:-08-cv-146

Petitioner,

-vs-

**District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz**

**COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, OHIO**

Respondent.

**ENTRY AND ORDER OVERRULING THE COURT OF COMMON
PLEAS OF MONTGOMERY COUNTY, OHIO'S OBJECTIONS (Doc. #11)
TO THE CHIEF MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS; ADOPTING THE CHIEF MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #9) IN ITS
ENTIRETY AND OVERRULING THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, OHIO'S MOTION TO DISMISS (Doc. #5)**

This matter is before the Court pursuant to Respondent Court of Common Pleas of Montgomery County, Ohio's (the "Common Pleas Court's") objections (doc. #11) to Chief Magistrate Judge Merz's Report and Recommendations (doc. #9). Petitioner John W. Slagle ("Slagle") has responded to the Common Pleas Court's Objections (doc. #13) and the matter is now ripe for decision.

Chief Magistrate Judge Merz recommends that the Common Pleas Court's Motion To Dismiss or for Judgment On the Pleadings (doc. #5) should be denied. He recommends that the Motion be denied because the Court cannot say that Slagle cannot present a case showing that there was no manifest necessity to declare a mistrial.

The District Judge has made a de novo review of the record on this matter pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that the Common Pleas Court's Objections are not well-taken and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations is ADOPTED in its entirety. The Common Pleas Court's Motion To Dismiss or for Judgment On the Pleadings (doc. #5) is OVERRULED.

DONE and **ORDERED** in Dayton, Ohio, this Ninth day of October, 2008.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record